

The Leesburg Planning Commission met on Thursday, July 6, 2006 in the Council Chambers, 25 West Market Street, Leesburg, Virginia. Staff members present were Susan Swift, Barbara Beach, Brian Boucher, Lee Phillips, Christopher Murphy, Bill Ackman and Linda DeFranco.

CALL TO ORDER

The meeting was called to order at 7:00pm by Vice Chairman Kalriess

PLEDGE OF ALLEGIANCE AND ROLL CALL

Present: Commissioner Barnes
Commissioner Burk
Commissioner Dunn
Vice Chairman Kalriess
Commissioner Miller
Commissioner Moore
Mayor Umstattd

Commissioner Hoovler was absent.

ADOPTION OF AGENDA

Commissioner Barnes moved to adopt the agenda as presented.

Motion: Barnes
Second: Miller
Carried: 6-0-1 (Hoovler absent)

APPROVAL OF MINUTES

Commissioner Miller moved to adopt the minutes of the May 18, 2006 meeting.

Motion: Miller
Second: Moore
Carried: 4-0-2-1 (Miller and Dunn abstained; Hoovler absent)

Commissioner Moore moved to adopt the minutes of the June 15, 2006 meeting.

Motion: Moore
Second: Burk
Carried: 4-0-2-1 (Miller and Dunn abstained; Hoovler absent)

CHAIRMAN'S STATEMENT

Vice Chairman Kalriess reviewed the agenda stating that the next item would be the public hearing on the development review and inspection fee schedule. Following that would be discussion on the Zoning Ordinance Amendments and then Council, Staff and Committee Reports, any Old Business and under New Business Election of Officers and cancellation of the second meeting in August.

PETITIONERS

None

PUBLIC HEARING

Brian Boucher, Zoning Administrator presented the objectives for the fee schedule revisions. Establishing fees to be consistent with other jurisdictions, along with assuring that the fees capture the current cost of the service or application to the taxpayers are two reasons for considering the increase. Mr. Boucher pointed out the new fees along with those fees that are changing. There was some discussion on the new fee that would impose a \$200 fee for the appeal of a BAR decision to Council.

Commissioner Moore asked if there were many frivolous appeals in the past? Commissioner Burk said this fee is really quite different from the other fees in that it may represent people looking out for their own property. Barbara Beach mentioned that this might make a \$200 appeal the only option to a property owner that may not be able to afford this. She said that she needed to further see if the town would be authorized to charge this.

Commissioner Miller stated that the right of appeal is inherent. She would have a problem with charging. However, if in the future the legal staff found authority to move toward a "nuisance" fine for a frivolous action she would agree to that. Mr. Boucher said this can take a lot of staff time and then, when it gets to Council, they withdraw, there is a great deal of wasted staff time. Barbara Beach suggested that a minimal fee be charged versus one that is trying to recoup staff time.

Mayor Umstattd mentioned that it would cost less than \$200 to go to Circuit Court for this type of action. We should not charge more. She also mentioned that the BAR must be sensitive to a resident's ability to pay for types of renovation that might be mandated by the BAR.

Brian Boucher gave further information on some of the fees that were being increased, explaining they have tried to factor in time involved, along with costs involved in running public notice advertisements. Mr. Boucher pointed out that this was scheduled to go to Town Council public hearing July 11, 2006.

Theresa Minchew, 330 West Market Street, and Chairman of the BAR, came forward to comment on the proposed fee changes. She doesn't want to discourage applicants to appear before the BAR so the fees should be minimal. With regard to the comprehensive sign plan, she requested that any charge over a minimal fee should be kept for those applications that don't require BAR review.

There were no other speakers from the public.

Commissioner Barnes commented that he objected to a large appeal fee. Otherwise he was in agreement.

Commissioner Miller asked about a fee that was not discussed. This was in reference to the \$50 permit fee for demolition. She asked how they arrived at this amount. Mr. Boucher said this was a very old fee and they wanted to be careful not to discourage demolition of a property because of a high demolition fee. Mrs. Miller said that some jurisdictions are charging by the square footage of the building and she thought this would be worthwhile investigating. Something like this would discourage frivolous demolition. Commissioner Kalriess asked if the town gets notified by cut off letter?

Mayor Umstattd added that demolition permits should not block destroying an eyesore.

Commissioner Burk asked how we would proceed with this fee increase.

Commissioner Moore asked how much income had been received from the fees in the past and how the proposed increase would affect this. How often does the town look at the fees? Mr. Boucher said the review of these is spotty. Mr. Moore said this should be tracked so that there could be increases for inflationary purposes. Ms. Beach mentioned that the Council needs to vote on these, and any increases need to be rational. Inflation is not considered rational at times. She went on to suggest that a sliding fee scale might be implemented since it would base a fee on the value of the property it would take a homeowner and a business owner into appropriate consideration. Alexandria has fee increases as part of their charter and Leesburg might want to consider adding this to their charter.

Commissioner Dunn inquired about review fees. The reason for increasing the fees is to cover review fees and cover the cost of advertising. He asked further about the increase in the cost of advertising. Barbara Beach stated that the ads are more technically comprehensive. She went on to explain the aspects of notice. Mr. Dunn asked if we could be more effective in the requirements of public hearing. Have staff review completely and be more effective in their public hearing information. Barbara Beach explained the process and apologized that this was not quite at the point it should be because of other ongoing projects. There was some further discussion on costs, staff overtime, remaining business friendly and the percentage of increase.

Commissioner Kalriess asked about the floodplain alteration fee. Under what circumstances would this come into play? Bill Ackman, Chief Engineer, mentioned the

KSI site that is partially in a floodplain. Years ago some of the 100 year floodplain lines were very general. When an application comes in for that particular area, then more sophisticated analysis is done. Mr. Kalriess asked what depicted a floodplain, Mr. Ackman responded that an area that has drainage of 50-acres plus depicts a floodplain. Mr. Kalriess asked when a floodplain study would be triggered, would it be an addition to a house? Mr. Ackman said when a development plan is required, e.g., earth moving, large infrastructure, etc. Mr. Kalriess also asked if there was a limit of disturbance prior to requiring a floodplain study.

Commissioner Kalriess then asked if the Commission excerpted two or three of these fees prior to Council meeting, what do they need to do. Ms. Beach recommended that they vote on all that they support and she would research any that might have some legal question.

Commissioner Moore asked if the motion would be to vote on what is here but to modify anything they don't agree with. In other words there could be amendments.

Commissioner Dunn said the overall changes would have an effect on the Planning budget with regard to these fees. It's hard to except if they haven't heard the numbers.

Commissioner Moore moved to approve the recommendations for modifications to the fee schedule presented in the memo from Susan Swift dated June 29, 2006 with the following modifications:

Zoning Application and Inspections – Zoning Certification letters – propose to increase from \$100 to \$150.

BAR – appeal of BAR decision to Council – propose to change from \$200 to \$25

Second – Commissioner Burk

Commissioner Miller offered friendly amendment. Add the BAR review of comprehensive sign plan. The BAR would like to make sure it differentiates between applications that normally go before BAR and those that are requested to go there. Only those normally not in their purview would be paying this fee.

This friendly amendment was accepted.

Mayor Umstattd commented that sometimes developers will offer to go before BAR thereby incurring additional costs. This proposed increase is not a huge impediment, but we want to encourage the developers go before BAR voluntarily. Don't build disincentives.

Commissioner Miller stated that no fee would be good. If we can set up a mechanism that encourages all the applicants go before BAR she would like to see the fee removed.

Theresa Minchew is concerned that they don't burden the small business owners in town. Tie it to square footage of project which would distribute this equitably.

Barbara Beach asked they consider distinction for review of BAR vs. Council. The fees need justification for difference or need to be equalized. To go into court is significantly less costly.

Commissioner Miller suggested removing the amount completely for the comprehensive sign review. Staff should encourage applicants to appear before the BAR.

Barbara Beach said, for example, if you require modification to the front of a house, how do you rationalize someone filing for a sign not to pay. We would have to justify in court why one applicant pays something and why another one pays nothing.

Commissioner Miller stated that basic review of comprehensive sign should be \$25 (BAR); Council review of comprehensive sign should also be \$25. Voluntary BAR of comprehensive sign review – no charge, N/A

Commissioner Kalriess suggested the appeal to Town Council on proffers be reduced from \$500 to \$200 as a friendly amendment.

Barbara Beach said the proffer appeal to Council is different from an initial decision and could be challenged. Mr. Kalriess withdrew the amendment.

Motion: Moore

Second: Burk

Carried: 5-1-1 (Dunn against, Hoover absent)

ZONING

There was some discussion on how to address the Zoning Ordinance Amendments in the most expeditious manner. It was decided that the list of amendments would be used to address each amendment.

Brian Boucher briefly advised the Commission that some of the amendments still required some legal review. This had not been completed because the town attorney was working in Richmond, and he had been out of the office unexpectedly. He explained that this portion of the meeting was a work session to allow the Commission to review and discuss the proposed amendments to the Zoning Ordinance. He went on to discuss why some of these amendments were necessary. Some zoning districts were eliminated in the new town plan. Several of the amendments are a result of an attempt to clarify the previous one.

At this point Vice Chairman Kalriess began going through the list of amendments stating that the Commission could either accept the amendment as written, discuss it further and/or ask that it be tabled for further review.

#1. Section 2.3.3 – BAR Members Terms

Barbara Beach stated that this item needed some wordsmithing and that she and Brian Boucher would revisit the language.

Commissioner Dunn asked if this fell in line with the BAR guidelines. Mr. Boucher said they were trying to meld the two statements to simplify them.

Theresa Minchew, Chairman of the BAR, commented that the BAR had not seen this and would like the opportunity to review this.

#2. Section 3.1.2 – Application Filing Fees – No discussion

#3. Sections 3.3.6D, 3.4.6.E.8.2.1B and 8.2.2.D – Special Exception and Rezoning Submittal Requirements

Commissioner Dunn, Item D, number 11 – please explain. Are we going to restrict buildings so that they need to look like the building next to them. Mr. Boucher explained that we want to see what the building will look like. This can affect properties nearby. Mr. Dunn asked about the digital formats requested in E 12 and 13 and wondered if staff wasn't pigeon holing itself with these statements. Barbara Beach said this is not a condition and should be put in the general area. Mr. Dunn said that the new, integrated system may not be compatible with what this amendment states. Commissioner Burk also reiterated that specifying a format is not a good idea. Generalizing the statement is the way to go. Commissioner Dunn then asked why they specified 20 copies under 8.2.1.B. Mr. Boucher said because of the number of reviewers. Commissioner Kalriess asked if the statement in #11 should say Primary Building Elevations or leave as Building Elevations. Mr. Boucher said they want to consider all buildings.

#4. Sections 7.5.2 and 7.6.3 – Applicability of H-1 and H-2 District to Public Projects - No Discussion

#5. Section 11.6.1.F – Increase of Sidewalk Width – Mayor Umstattd asked if this could apply to a new town project in an older subdivision. This will become an area of contention since it will result in the taking of property. Commissioner Kalriess asked if ADA was applicable in old and historic districts. Barbara Beach said ADA applied to structures, not sidewalks. Bill Ackman stated that sidewalks are required to widen every so many feet to allow wheelchairs to pass. If sidewalks are made wider to begin with, this could be alleviated.

#6 Section 7.5.10 – Designation of H-1 Historic Districts and Landmarks – will have further discussion.

#7. Sections 3.6.E2 & 3.4.6.F.3 – Traffic Impacts Analysis – New Threshold

#8. Section 9.3.21 – Performance Standards for Service Stations. Commissioner Kalriess would like to have the BAR review this since item I is unclear. Mayor Umstattd asked about the location of the garage doors. – No Discussion

#9. Section 12.11 Outdoor Lighting – Maximum Pole Height

#10 Section 11.8.3 – Stacking Spaces for Bank Drive Through Windows. Barbara Beach asked how you distinguish from one drive through use to another. Why would banks differ from restaurants? Brian Boucher responded that some uses have heavier traffic than others, which is why there are different standards. Lee Phillips stated that banks have several drive through windows, while restaurants have only one. Barbara Beach said a bank with just one drive through should be differentiated from those that have several.

#11. Section 12.2.3.A Revised Landscape Plan Scale – No Comment

#12. Section 15.5.14 – Neon Signs and BAR Review. Barbara Beach did say that content of the sign was not in their purview, however, they do exercise the right to deny what the sign says. – No Discussion

#13. Sections 3.3.6K and 8.2.2F – Architectural Design/Historic Preservation in Planned Development Districts. – Return to this item. Commissioner Kalriess would like further clarification on the process of sign off.

#14. Sections 10.4.5.E.1.a and b - Elimination of Special E. Market Street Setbacks – No Discussion

#15. Revised District Descriptions – No Discussion

#16. Elimination of Zoning Districts Sec. 6.2 O-2, Office Park District; Sec. 6.8 I-2, Industrial Warehouse Office District; and Sec. 6.9 M-1, Basic Industry District. No Discussion

#17. Section 3.12 Commission Permits Procedure – Commissioner Kalriess said to check the list relative to procedures list and requirements.

#18 Section 9.3.23 Telecommunications Facilities Amendments – Commissioner Moore asked if the language at the beginning was to be included in the revised ordinance. Mr. Boucher said no, those were just clarifications. With regard to undergrounding, there needs to be clarification regarding which telecommunications facilities should fall under this requirement. Since existing ones are grandfathered, it should say this applies to “all proposed structures”. Commissioner Dunn asked why telecommunications facilities are not considered public utilities. Chris Murphy said they are privately owned and not part of “public utilities”. Mr. Dunn asked that a stronger definition of telecommunications encompasses. Mr. Murphy said this relates directly to transmission poles, not other parts of the transmission system. Mayor Umstattd said that the reference to satellite dishes and the fact they should be screened needs to be readdressed because of the size reference in the ordinance. Commissioner Kalriess asked about a 150’ high monopole and said something architectural should be done with this. Mr. Murphy said the language can be altered to take this into consideration.

#19. Section 9.2 and Various Districts – Addition of Telecommunications Facilities to District Use Lists and the Use Table in Article 9. – No discussion

#20. Section 11.10 – New Waiver for Loading Spaces – Commissioner Kalriess had a question on the WB-50 and the SU. If there is a 100,000 s.f. building, does it need five loading spaces? No, the number of loading spaces is not based on that, although you may have up to five.

#21. Article 18. Expanding Housing types Described in the Zoning Ordinance. This is just a clarification of terms for the types of housing that could come in. Commissioner Dunn said that our language for multi-family is not consistent with the definition that Fannie Mae has. No Discussion

#22. Section 3.15 – Adding a Procedure for Proffer Appeals. – No Discussion

#23. Section 3.1.9.A.3.C - Written Notice. This was amended to be in compliance with the State Code. This also allows the applicant to be responsible for placing ads, and allows the notifier to use first class mail rather than certified mail. – No Discussion

#24. Section 9.4.3.D. – Trucking Company Listed as a Prohibited Home Occupation. Commissioner Moore asked why a real estate broker was on this list. Brian Boucher responded that they generate a lot of traffic. No Discussion

#25. Section 10.4.5.C.5 Decks & Patios – Setbacks – No Discussion

#26. Section 10.4.5. Deleting Opaque Fence Requirement for Swimming Pools. No Discussion.

#27. Section 11.5.2 – Trucks parked in Residential Areas. Commissioner Dunn commented that a guest could be the company that owns the truck. Mr. Kalriess asked that the weight change be checked to make sure it covers all vehicles that could be private vehicles. The question of a school bus came up along with large panel trucks that might be used for someone's livelihood. Mr. Boucher agreed that this needed some additional work.

#28. Section 12.9.4 – Plant Diversity in Small Projects – No Discussion

#29. Section 11.6.1.D Residential Driveways – Commissioner Kalriess asked about the statement “two foot section of the Commercial parking spaces . . .” This will be wordsmithed and brought back.

#30. Section 11.6.1K – Front yard paving Maximum in Residential Districts – Mayor Umstatt recommended that the words “front yard” be added to the text prior to “no paved surface. . .” Commissioner Burk added that some front yards are very small and may exceed the 35% limit. Mr. Boucher said they would look into this. Mr. Burk said if they put in the percentage of the width, they could avoid this. Commissioner Dunn asked

if gravel fell under the same restriction. The Mayor asked if grasscrete was allowed, also thinking this might not be as applicable because grass does grow through it.

#31. Section 12.4.1 Street Trees Applicability – Correction of Intent – No Discussion

#32. Section 12.8.4.B. Institutional (Buffer) – Adding “Child Care Center” to the Buffer Matrix – No Discussion

#33. Article 18 – Add a Definition for “Industrial/Flex” Use – No Discussion

#34. Article 18 – Add a Definition for “Postal Service” Use – No Discussion

#35. Article 18 – Amend definition for “Warehouse” Use – No Discussion

#36. Sections 9.2, 9.3, 28, 11.3 and Article 18 – Add Standards for emergency shelters such as a warming center or domestic abuse shelter. – Mayor Umstattd said that there was a special exception application coming up that the amendment may not address.

#37. Section 3.4.5 Concurrent Review of Special Exceptions and Rezonings – No Discussion

#38. Section 6.3.3 – Modification of Rear Yard Setbacks in the B-1 District – Commissioner Kalriess asked if this should include Royal Street. No Discussion

#39. F.A.R. for Hotel Uses in the B-2 District. Commissioner Kalriess asked why this was just applied to hotels. The fact that some of the f.a.r. is used for hallways and non inhabited spaces. He also discussed some of the buffer requirements, etc. Mr. Kalriess said institutional uses could also fall into this category. Ms. Beach said the .3 would be a by right f.a.r., but they could then negotiate for a higher f.a.r. through special exception.

There was further discussion on sidewalk width. Bill Ackman said VDOT used to have a three-foot standard width that was increased to four feet. At 200-foot intervals there need to be five foot widths to allow wheelchairs to pass. Lee Phillips said they didn’t want to have 4’, 5’, 4’ so they decided to make the standard width 5 feet.

Vice Chairman Kalriess said that this item would come back on the July 20th Planning Commission agenda.

SUBDIVISION AND LAND DEVELOPMENT

None

COMPREHENSIVE PLANNING

None

COUNCIL AND REPRESENTATIVE'S REPORTS

None

STAFF AND COMMITTEE REPORTS

None

OLD BUSINESS

None

NEW BUSINESS

Election of Officers. It was decided to wait until all members were present to hold the elections. This will be deferred until the next meeting.

Vacation August 17th. Clerk Linda DeFranco noted that renovations of the Council Chambers were scheduled to begin on August 9th for the rest of the month. It was decided to cancel the August 17th meeting.

ADJOURNMENT

The motion was made to adjourn at 10:38pm.

Prepared by:

Approved By:

Linda DeFranco, Commission Clerk

Ted Kalriess, Vice Chairman